

Supreme Court, U.S.

FILED

05-671 NOV 22 2005

OFFICE OF THE CLERK

**In the
Supreme Court of the United States**

TEXAS DEPARTMENT OF PUBLIC SAFETY,
Petitioner,

v.

JULIE DUNLOP ESPINOZA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

GREG ABBOTT
Attorney General of Texas

BARRY R. MCBEE
First Assistant Attorney
General

EDWARD D. BURBACH
Deputy Attorney General
for Litigation

R. TED CRUZ
Solicitor General
Counsel of Record

RANCE L. CRAFT
Assistant Solicitor General

AMY WARR
Assistant Solicitor General

P.O. Box 12548
Austin, Texas 78711
(512) 936-1700

QUESTIONS PRESENTED

In *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985), the Court held that Section 504 of the Rehabilitation Act neither effected a valid abrogation of state sovereign immunity nor laid the predicate for a valid waiver of immunity by the States, because the statutory language was insufficiently clear and unambiguous. In response, Congress enacted the Civil Rights Remedies Equalization Act of 1986, 42 U.S.C. §2000d-7(a), which purports to expressly abrogate state sovereign immunity. Since 1986, however, this Court's precedents have raised substantial doubts as to the constitutionality of that attempted abrogation. See *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44 (1996).

In the instant case, the court of appeals held that the plain language of Section 2000d-7(a)—which expressly attempts to abrogate state immunity—simultaneously served as conditional waiver language. Although characterizing the abrogation language as “janus-faced,” the court nonetheless deemed the statutory text also to be clear and unambiguous waiver language.

1. Should the Court resolve the circuit split over whether a State's acceptance of federal funds constitutes a knowing waiver of sovereign immunity pursuant to the language of Section 2000d-7(a)?
2. Assuming that Section 2000d-7(a) creates a valid conditional waiver, does that provision's requirement that immunity be waived if an agency receives *any* federal funds whatsoever, regardless of the nature or purpose of those funds, violate the “relatedness” prong of *South Dakota v. Dole*, 483 U.S. 203, 207 (1987), that Congress's authority to impose conditions under the Spending Clause must be limited to those conditions that relate to “the federal interest in particular national projects or programs”?

PARTIES TO THE PROCEEDING

Petitioner is the Texas Department of Public Safety, a government agency of the State of Texas. Respondent is Julie Dunlop Espinoza. Intervenor is the United States of America.

TABLE OF CONTENTS

Questions Presented	i
Parties to the Proceeding	ii
Opinions Below	2
Jurisdiction	2
Constitutional and Statutory Provisions Involved	2
Statement	4
Reasons for Granting the Petition	11
I. The Court Should Grant Certiorari to Resolve Whether 42 U.S.C. §2000d-7(a) Unambiguously Conditions the Receipt of Federal Funds upon the Waiver of Sovereign Immunity and to Resolve the Circuit Split Over Whether States Knowingly Waive Their Eleventh Amendment Immunity Pursuant to That Section By Accepting Federal Funds.	12
A. Unambiguous Statutory Language Is an Essential Prerequisite to a Valid Spending Clause Condition.	13
B. Section 2000d-7(a) Does Not Clearly and Unambiguously Condition the Receipt of Federal Funds on the Waiver of Sovereign Immunity.	14
1. The reference to “federal funds” in Section 2000d-7(a) does not transform the abrogation language into clear and unambiguous conditional waiver language.	15

2. Dicta from <i>Lane v. Pena</i> does not support the court of appeals's reading of Section 2000d-7(a) as clear and unambiguous waiver language. . .	16
C. The Fifth Circuit's Decision Conflicts With This Court's Precedent and with a Decision of the Second Circuit.	19
1. The Fifth Circuit's decision widens the circuit split regarding Section 2000d-7(a).	19
2. The Fifth Circuit's contradicts this Court's precedents by inferring conditional waiver from a statute that is, at a minimum, ambiguous. . .	20
II. The Court of Appeals's Decision Disregards <i>Dole's</i> Relatedness Limitation on Congress's Spending Clause Authority and Thereby Threatens the Constitutional Balance of Power Between the Federal Government and the States.	24
A. The Relatedness Limitation on Congress's Spending Power Is a Critical Component of Our Federalism.	25
B. The Court of Appeals's Decision Disregards <i>Dole's</i> Relatedness Requirement.	27
C. The Courts of Appeals' Recurring Disregard of <i>Dole's</i> Relatedness Requirement Warrants the Court's Review.	29
Conclusion	30

TABLE OF AUTHORITIES

Cases

<i>A.W. v. Jersey City Pub. Schs.</i> , 341 F.3d 234 (CA3 2003) . . .	19
<i>Atascadero State Hosp. v. Scanlon</i> , 473 U.S. 234 (1985)	i, 1, 12, 13, 14, 15, 17, 18, 21-23
<i>Barbour v. Wash. Metro. Area Transit Auth.</i> , 374 F.3d 1161 (CA9 2004)	25, 28, 29
<i>Bd. of Trs. of the Univ. of Ala. v. Garrett</i> , 531 U.S. 356 (2001)	i, 6, 13, 14, 20
<i>Bruggeman v. Blagojevich</i> , 324 F.3d 906 (CA7 2003)	19
<i>Cherry v. Univ. of Wis. Sys. Bd. of Regents</i> , 265 F.3d 541 (CA7 2001)	17
<i>Clark v. California</i> , 123 F.3d 1267 (CA9 1997)	17
<i>Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.</i> , 527 U.S. 666 (1999) . . .	9, 13, 14, 21, 23
<i>Constantine v. Rectors & Visitors of George Mason Univ.</i> , 411 F.3d 474 (CA4 2005)	29
<i>Coolbaugh v. Louisiana</i> , 136 F.3d 430 (CA5 1998)	6, 7

<i>Fla. Ass'n of Rehab. Facilities, Inc. v. Fla. Dep't of Health & Rehab. Servs.</i> , 225 F.3d 1208 (CA11 2000) . . .	21
<i>Garcia v. S.U.N.Y. Health Scis. Ctr.</i> , 280 F.3d 98 (CA2 2001)	8, 9, 18-20, 23
<i>Garrett v. Univ. of Ala. Bd. of Trs.</i> , 344 F.3d 1288 (CA11 2003) (per curiam)	19, 20
<i>Hosp. Ass'n of N.Y. State, Inc. v. Toia</i> , 577 F.2d 790 (CA2 1978)	21
<i>Jim C. v. United States</i> , 235 F.3d 1079 (CA8 2000) (en banc)	17, 19, 26, 29, 30
<i>Johnson v. Zerbst</i> , 304 U.S. 458 (1938)	14
<i>Koslow v. Commonwealth</i> , 302 F.3d 161 (CA3 2002)	10, 17, 19, 26-29
<i>Lane v. Pena</i> , 518 U.S. 187 (1996)	16, 17
<i>Litman v. George Mason Univ.</i> , 186 F.3d 544 (CA4 1999)	17
<i>Lovell v. Chandler</i> , 303 F.3d 1039 (CA9 2002)	19, 29
<i>Massachusetts v. United States</i> , 435 U.S. 444 (1978) (plurality op.)	24
<i>Miller v. Tex. Tech Univ. Health Scis. Ctr.</i> , 342 F.3d 563 (CA5 2003)	9

<i>Mills v. Tex. Tech Univ. Health Scis. Ctr.</i> , 421 F.3d 342 (CA5 2005) (en banc)	4, 28
<i>New York v. United States</i> , 505 U.S. 144 (1992) ..	24, 25, 27, 28
<i>Nieves-Márquez v. Puerto Rico</i> , 353 F.3d 108 (CA1 2003)	19, 29
<i>Nihiser v. Ohio E.P.A.</i> , 269 F.3d 626 (CA6 2001)	17, 19
<i>Pace v. Bogalusa City Sch. Bd.</i> , 339 F.3d 348 (CA5 2003) ...	7
<i>Pace v. Bogalusa City Sch. Bd.</i> , 403 F.3d 272 (CA5 2005) (en banc)	4, 9-12, 18
<i>Pederson v. La. State Univ.</i> , 213 F.3d 858 (2000)	17
<i>Pennhurst State Sch. & Hosp. v. Halderman</i> , 451 U.S. 1 (1981))	14, 22, 23
<i>Pennsylvania v. Union Gas Co.</i> , 491 U.S. 1 (1989) (plurality op.)	13, 21
<i>Reickenbacker v. Foster</i> , 274 F.3d 974 (CA5 2001)	7
<i>Robinson v. Kansas</i> , 295 F.3d 1183 (CA10 2002)	17, 19
<i>Sandoval v. Hagan</i> , 197 F.3d 484 (CA11 1999), rev'd in part on other grounds sub nom <i>Alexander v. Sandoval</i> , 532 U.S. 275 (2001)	17
<i>Seminole Tribe of Fla. v. Florida</i> , 517 U.S. 44 (1996)	13, 20, 21, 24, 26

<i>South Dakota v. Dole</i> , 483 U.S. 203 (1987) . . . i, 4-11, 19, 23-30	
<i>Stanley v. Litscher</i> , 213 F.3d 340 (CA7 2000)	19
<i>Tennessee v. Lane</i> , 541 U.S. 509 (2004)	13, 15, 20
<i>United States v. Butler</i> , 297 U.S. 1 (1936)	25, 27
<i>United States v. Lopez</i> , 514 U.S. 549 (1995)	28
<i>Va. Dep't of Educ. v. Riley</i> , 106 F.3d 559 (CA4 1997) (en banc) (plurality op.)	26

Constitutional Provisions and Statutes

U.S. CONST. amend. XI	2
U.S. CONST. art. I, §8, cl. 1	2
20 U.S.C.A. §1681 <i>et seq.</i>	3, 25
28 U.S.C. §1254(1)	2
29 U.S.C. §794(a)	3, 5
29 U.S.C.A. §794	3
42 U.S.C. §12132	5
42 U.S.C. §12202	14
42 U.S.C. §1396a	21

42 U.S.C. §2000d-7	26
42 U.S.C. §2000d-7(a)	<i>passim</i>
42 U.S.C. §2000d-7(a)(1)	3, 6, 12
42 U.S.C.A. §2000d <i>et seq.</i>	3
42 U.S.C.A. §6101 <i>et seq.</i>	3

Other Authorities

Lynn A. Baker & Mitchell N. Berman, <i>Getting Off the Dole: Why the Court Should Abandon Its Spending Doctrine, and How a Too-Clever Congress Could Provoke It To Do So</i> , 78 IND. L.J. 459, 466 (2003)	30
PUB. L. NO. 94-182, §111(a), 89 Stat. 1051	22
PUB. L. NO. 94-552, 90 Stat. 2540 (1976)	21

No. _____

**In the
Supreme Court of the United States**

TEXAS DEPARTMENT OF PUBLIC SAFETY,
Petitioner,

v.

JULIE DUNLOP ESPINOZA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

This case presents fundamental questions about sovereign immunity, statutory plain text, and whether the Spending Clause of the Constitution has any meaningful limits. The court of appeals's decision followed its holdings in two companion cases that (1) an admittedly "janus-faced" statute, whose plain text purports to abrogate sovereign immunity, simultaneously serves to clearly and "unambiguously" create a conditional waiver; and (2) a state agency that accepts *any* federal funds for any purpose must forfeit its Eleventh Amendment immunity from Rehabilitation Act suits. Both holdings undermine critical limits on Congress's authority that the Court recognized in *Atascadero State Hospital v. Scanlon* and *South Dakota v. Dole*, and the Court should grant the petition to reaffirm these sound pillars of federalism.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-3) is not reported. The memorandum opinion and order of the district court denying the Department's motion to dismiss (Pet. App. 4-16) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on August 25, 2005. Pet. App. 1. Petitioner invokes the Court's jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Spending Clause of Article I of the United States Constitution provides:

"The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States" U.S. CONST. art. I, §8, cl. 1.

The Eleventh Amendment to the United States Constitution provides:

"The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI.

Section 504(a) of the Rehabilitation Act of 1973 provides:

"No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded